

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DEREK A. DEAL,

Plaintiff,

-against-

9:04-CV-0072
(LEK/DEP)

TODD YURACK and
PAUL ALMSTEAD,

Defendants.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on August 31, 2007 by the Honorable David E. Peebles, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3 of the Northern District of New York. Report-Rec. (Dkt. No. 79). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Plaintiff Derek Deal and Defendants Todd Yurack and Paul Almstead, which were each filed on September 17, 2007. Plntf's Objections (Dkt. No. 83); Defts' Objections (Dkt. No. 84).

It is the duty of this Court to "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b). "A [district] judge... may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id. This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 79) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

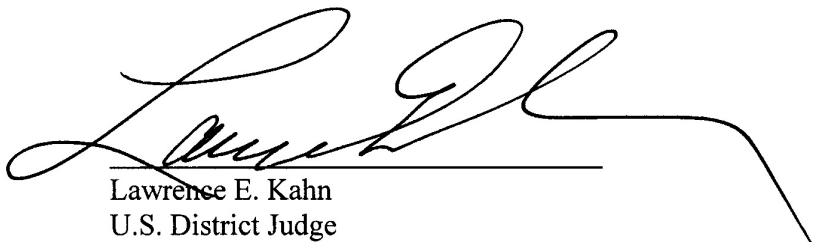
ORDERED, that Plaintiff's Motion for leave to amend his Complaint (Dkt. No. 71) is **DENIED**; and it is further

ORDERED, that Defendant's Motion for summary judgment (Dkt. No. 69) is **GRANTED IN PART**, in that Plaintiff's procedural due process claim and assault and battery causes of action, as well as the portion of Plaintiff's retaliation claim related to the January 18, 2003 misbehavior report be **DISMISSED**, but **DENIED IN PART**, in that Plaintiff's excessive force claims against Defendant and retaliation cause of action against Defendant Almstead, related to the issuance of the February 2 and February 3, 2003 misbehavior reports remain pending for trial; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: September 24, 2007
Albany, New York



Lawrence E. Kahn
U.S. District Judge